

**Attachment A
General Terms and Conditions**

DEFINITIONS

Unless indicated otherwise from the context, the following terms shall have the following meanings in this Contract. All definitions are from 9 NCAC 3M.0102 unless otherwise noted. If the rule or statute that is the source of the definition is changed by the adopting authority, the change shall be incorporated herein:

- (1) "Division" (as used in the context of the definitions below) shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, agency, department, authority or other unit of government of the State or of any county, unit, special district or other political subagency of government. For other purposes in this Contract, "Division" shall mean the entity identified as one of the parties hereto.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Certification of Compliance" means a report provided by the Division to the Office of the State Auditor that states that the Grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the Division and copies of the submitted grantee reporting package.
- (4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Agency within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.
- (5) "Contract" means a legal instrument that is used to reflect a relationship between the Division, Agency Grantee, and Subgrantee.
- (6) "Fiscal Year" means the annual operating year of the non-State entity.
- (7) "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- (9) "Grant" means financial assistance provided by an agency, grantee, or subgrantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or subgrantee during the performance of the grant.
- (10) "Grantee" has the meaning in N.C.G.S. 143C-6-23(a)(2): a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For other purposes in this Contract, "Grantee" shall mean the entity identified as one of the parties hereto.
- (11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- (12) "Non-State Entity" has the meaning in N.C.G.S. 143C-1-1(d)(18): Any of the following that is not a State agency: An individual, a firm, a partnership, an association, a county, a corporation, or any other organization acting as a unit. The term includes a unit of local government and public authority.
- (13) "Public Authority" has the meaning in N.C.G.S. 143C-1-1(d)(22): A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation and (ii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.
- (14) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.
- (16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are subgranted to other organizations. Pursuant to N.C. Gen. Stat. § 143C-6-23(a)(1), the terms

"State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.

(17) "Subgrantee" has the meaning in N.C. Gen. Stat. § 143C-6-23(a)(3): a non-State entity that receives a grant of State funds from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(18) "Unit of Local Government" has the meaning in N.C.G.S. 143C-1-1(d)(29): A municipal corporation that has the power to levy taxes, including a consolidated city-county as defined by N.C.G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

Relationships of the Parties

Independent Contractor: The Grantee is and shall be deemed to be an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Division.

Subcontracting: The Grantee shall not subcontract any of the work contemplated under this Contract without prior written approval from the Division. Any approved subcontract shall be subject to all conditions of this Contract. Only the subcontractors or subgrantees specified in the contract documents are to be considered approved upon award of the contract. The Division shall not be obligated to pay for any work performed by any unapproved subcontractor or subgrantee. The Grantee shall be responsible for the performance of all of its subgrantees and shall not be relieved of any of the duties and responsibilities of this Contract.

Subgrantees: The Grantee has the responsibility to ensure that all subgrantees, if any, provide all information necessary to permit the Grantee to comply with the standards set forth in this Contract.

Assignment: No assignment of the Grantee's obligations or the Grantee's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:

(a) Forward the Grantee's payment check(s) directly to any person or entity designated by the Grantee, or

(b) Include any person or entity designated by Grantee as a joint payee on the Grantee's payment check(s).

In no event shall such approval and action obligate the State to anyone other than the Grantee and the Grantee shall remain responsible for fulfillment of all contract obligations.

Beneficiaries: Except as herein specifically provided otherwise, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Division and the named Grantee. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Division and Grantee that any such person or entity, other than the Division or the Grantee, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

Indemnity and Insurance

Indemnification: The Grantee agrees to indemnify and hold harmless the Division, the State of North Carolina, and any of their officers, agents and employees, from any claims of third parties arising out of any act or omission of the Grantee in connection with the performance of this Contract.

Insurance: During the term of the contract, the Grantee at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the Grantee shall provide and maintain the following coverage and limits:

(a) **Worker's Compensation** - The grantee shall provide and maintain Worker's Compensation Insurance as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Grantee's employees who are engaged in any work under the contract. If any work is sublet, the Grantee shall require the subgrantee to provide the same coverage for any of his employees engaged in any work under the contract.

(b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)

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- (c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in performance of the contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$25,000.00 medical payment.

Providing and maintaining adequate insurance coverage is a material obligation of the Grantee and is of the essence of this Contract. The Grantee may meet its requirements of maintaining specified coverage and limits by demonstrating to the Division that there is in force insurance with equivalent coverage and limits that will offer at least the same protection to the Division. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Grantee shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Grantee shall not be interpreted as limiting the grantee's liability and obligations under the contract.

Default and Termination

Termination by Mutual Consent: The Parties may terminate this Contract by mutual consent with 60 days notice to the other party, or as otherwise provided by law.

Termination for Cause: If, through any cause, the Grantee shall fail to fulfill its obligations under this Contract in a timely and proper manner, the Division shall have the right to terminate this Contract by giving written notice to the Grantee and specifying the effective date thereof. In that event, all finished or unfinished deliverable items prepared by the Grantee under this Contract shall, at the option of the Division, become its property and the Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made. Notwithstanding the foregoing provision, the Grantee shall not be relieved of liability to the Division for damages sustained by the Division by virtue of the Grantee's breach of this agreement, and the Division may withhold any payment due the Grantee for the purpose of setoff until such time as the exact amount of damages due the Division from such breach can be determined. The filing of a petition for bankruptcy by the Grantee shall be an act of default under this Contract.

Waiver of Default: Waiver by the Division of any default or breach in compliance with the terms of this Contract by the Grantee shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this Contract unless stated to be such in writing, signed by an authorized representative of the Division and the Grantee and attached to the contract.

Availability of Funds: The parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds to the Division for the purpose set forth in this Contract.

Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statutes of limitation.

Intellectual Property Rights

Copyrights and Ownership of Deliverables: All deliverable items produced pursuant to this Contract are the exclusive property of the Division. The Grantee shall not assert a claim of copyright or other property interest in such deliverables.

Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the Division shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365 (n) and any amendments thereto.

Compliance with Applicable Laws

Compliance with Laws: The Grantee shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business or that are applicable to non-State entities receiving State funds (specifically but not limited to N.C.G.S. Chapter 143C Part 3. and 09 NCAC 03M), including those federal, state, and local agencies having jurisdiction and/or authority.

An application funded with the release of Federal or State funds through a grant award does not constitute, or imply, compliance with Federal regulations or State law. Grantees are responsible for ensuring that their activities comply with all applicable Federal regulations and State law.

Equal Employment Opportunity: The Grantee shall comply with all federal and State laws relating to equal employment opportunity.

Confidentiality

Confidentiality: Subject to public records laws, any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Grantee under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Division. The Grantee acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this Contract.

Oversight

Access to Persons and Records: The State Auditor and the Division, as the State funding authority, shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with N.C.G.S. 147-64.7 and N.C.G.S. 143-49(9).

Record Retention: Records shall not be destroyed, purged or disposed of in violation of North Carolina state agency records retention policies. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to Federal policy and regulations, record retention may be longer than five years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later.

Miscellaneous

Choice of Law: The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, are governed by the laws of North Carolina. The Grantee, by signing this Contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

Amendment: This Contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Division and the Grantee.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect.

Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this Contract.

Certification Regarding Collection of Taxes: N.C.G.S. 143-59.1 bars the Secretary of Administration from entering into contracts with vendors that meet one of the conditions of N.C.G.S. 105-164.8(b) and yet refuse to collect use taxes on sales of tangible personal property to purchasers in North Carolina. The conditions include: (a) maintenance of a retail establishment or office; (b) presence of representatives in the State that solicit sales or transact business on behalf of the vendor; and (c) systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. The Grantee certifies that it and all of its affiliates (if any) collect all required taxes.

Care of Property: The Grantee agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this Contract and will reimburse the Division for loss of, or damage to, such property. At the termination of this Contract, the Grantee shall contact the Division for instructions as to the disposition of such property and shall comply with these instructions.

Travel Expenses: Reimbursement to the Grantee for travel mileage, meals, lodging and other travel expenses incurred in the performance of this Contract shall be reasonable and supported by documentation. State rates should be used as guidelines. International travel shall not be reimbursed under this Contract.

Sales/Use Tax Refunds: If eligible, the Grantee and all subgrantees shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to N.C.G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

Advertising: The Grantee shall not use the award of this Contract as a part of any news release or commercial advertising.

Executive Order 24: By Executive Order 24, issued by Governor Perdue, and N.C.G.S. 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipate bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and N.C.G.S. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24.

The Iran Divestment Act: Pursuant to G.S. 147-86.59, any vendor identified as engaging in investment activities in Iran, as determined by appearing on the current Final Divestment List created by the NC State Treasurer as required by G.S. 147-86.58, is ineligible to contract with the State of North Carolina or any political subdivision of the State. Execution of this contract by the undersigned vendor constitutes vendor's certification that (a) Vendor does not appear on the Treasurer's Divestment List found at: <https://www.nctreasurer.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>, and (b) that vendor will not utilize any subcontractor that is identified on such list to perform work under this contract.